

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/851,480 Confirmation No.: 3771
Applicant(s): Florence
Filed: May 9, 2001
Art Unit: 3623
Examiner: Jeanty, Romain
Title: METHOD AND SYSTEM OF DELIVERING ITEMS USING
OVERLAPPING DELIVERY WINDOWS

Docket No.: 018360/234317
Customer No.: 00826

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

This Reply Brief is filed in response to the Examiner's Answer mailed on November 29, 2007, the Examiner's Answer being in response to an Amended Appeal Brief filed July 16, 2007. This Brief addresses the Examiner's Answer to the same.

In reply to the Examiner's Answer, Appellants again submit that the claimed invention is patentable over the cited references, *Tsukuda, David*, and *Smith*, either alone or in combination.

The Examiner's Answer is, in large part, simply a repeat of the reasoning used in the final Office Action in rejecting the currently pending claims. Appellants respectfully submit that since the Appeal Brief pointed out the flaws in the Examiner's reasoning with respect to these rejections, a repeat of all the arguments provided in the Appeal Brief will not be presented herein. Rather, Appellants will direct the comments presented herein toward responding to the specific assertions from the Response to Argument section beginning at page 5 of the Examiner's Answer. In the Response to Argument sections of the Examiner's Answer, the Examiner has discussed the cited references in relation to the claimed invention.

Reply to Examiner's Assertions

In his Response to Arguments, the Examiner states that *Tsukuda* discloses a delivery management system in which an individual may choose a delivery time “with the obvious difference that receiving choices from a plurality of overlapping time windows are not made by a recipient,” thus implying that the only missing feature of *Tsukuda* is that the delivery time be selected by the recipient. (Examiner’s Answer, Page 6). For this, the Examiner relies on *David*, stating that “*David* teaches a system in which a customer (the examiner interprets the customer as ‘recipient’) selects.” (*Id.*). However, the Examiner again overlooks the fact that neither of the references teaches or suggests offering a plurality of time windows, or a subset of the plurality, to a recipient as available times for delivery of an item, wherein the plurality, or subset, includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows, as recited, albeit in somewhat different language, in each of Applicant’s independent claims.

For this element, the Examiner states that he interprets “this feature” of *David*, namely a system in which a customer selects a delivery time, “as a customer desiring a product to be delivered in a particular month and during the first two weeks or last two weeks of that particular month. The sequential time windows are the month and the overlapping windows are the week.” (*Id.*).

Applicant first notes that *David* makes no mention whatsoever of a user desiring that a product be delivered in a particular month and during either the first or last two weeks of the month. In contrast, as noted in Applicant’s Amended Appeal Brief, *David* discloses enabling the customer to “select delivery times within two-hour windows.” (Amended Appeal Brief, Page 7; *David*, Page 2). In fact, Applicant cannot think of any real-life scenarios in which a recipient would select a month and a two week period during which he or she would like to receive a package.

Regardless of the foregoing, Applicant further submits that offering delivery within a particular month and during the first or last two weeks of the month is not the same as or equivalent to offering two sequential time windows and an overlapping time window that

overlaps a portion of each of the sequential time windows. By definition, the first two weeks of the month lie within that month and do not overlap the preceding month. Similarly the last two weeks of the month lie within that month and do not overlap the following month. As a result, even assuming, as the Examiner has, that the months constitute the sequential time windows, the first and last two weeks of each month are not overlapping time windows, since they do not overlap a portion of each of the sequential time windows.

It is important to again point out, as was noted in Applicant's Amended Appeal Brief, that use of overlapping time windows, as opposed to simply using sequential time windows, has been shown to significantly increase the number of times a driver stops in a given hour to deliver items (i.e., the number of Stops Per On Road Hour (SPOR)). This, in turn, decreases the number of drivers required to achieve the same number of deliveries in a given amount of time. In addition, use of overlapping time windows, among other things, provides a customer with more choices, while not limiting the amount of time within which the driver can deliver the package.

CONCLUSION

For at least the foregoing reasons, as well as those presented in the Appeal Brief, Applicant respectfully requests that the rejections be reversed.

Respectfully submitted,

/Jennifer F. Miller/

Jennifer F. Miller
Registration No. 56,278

CUSTOMER No. 00826

ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Atlanta Office (404) 881-7000
Fax Atlanta Office (404) 881-7777
ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON January 29, 2007